WA 155/2001
BEFORE
HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR JUSTICE HRISHIKESH ROY

H. Roy, J.

Heard Mr. N. Dutta, learned Sr. counsel for the appellant/writ petitioner. Also heard Mr. D.C. Chakraborty, the learned counsel appearing for the Central Government and Ms. B. Goyal, the learned Government Advocate, Assam. The respondent No.7 is represented by the learned counsel Mr. H. K. Sharma.

2. The present appeal arose out of a writ petition being Civil Rule No.3465/93 filed by the appellant/petitioner, through which the writ petitioner challenged the decision of the Central Government conveyed through communication dated 04.02.1992 (Annexure-L), whereby it was clarified that 'Coke Breeze', which is used in the cement manufacturing process, is not eligible for transport subsidy. The writ petitioner has also sought a mandamus for payment of its pending claim for transport subsidy in respect of 'Coke Breeze' in terms of the Transport Subsidy Scheme, 1971 and in terms of the letter of the Central Government dated 17.03.1987 (Annexure-I).

3. During the writ proceeding the counsels for the writ petitioner did not participate in the hearing and accordingly the learned Single Bench, having regard to the nature of the case and the long pendency of the matter, considered the writ petition on merits. After an elaborate discussion on the contentions raised through the pleadings, the writ petition came to be dismissed by the impugned order dated 03.04.2001. The said dismissal order is under challenge in the present appeal.

4. In order to appreciate the issues raised in the writ petition as well as in the writ appeal, it would be necessary to briefly refer to some salient facts, which would have a bearing on deciding the issues raised in the present proceeding.

5. The Government of India notified a scheme, known as the Transport Subsidy Scheme, 1971 (hereinafter referred to as the Scheme), to encourage industrial development in the under developed North Eastern Region. The scheme envisages reimbursement of the cost of transportation of raw materials as also of finished goods up to specified limits for eligible industries, set up in the Region. Reimbursement of transportation cost and the conditions of eligibility as well as the manner of disbursement of such transport subsidy, have been indicated in the said scheme notified by the Central Government in the year 1971.

Thereafter, the scheme came to be extended from time to time and by notification dated 01.04.1985 (Annexure-D), the scheme was initially extended from 01.04.1985 to 31.03.1990, i.e. the duration of the 7th 5 year Plan period. Thereafter, the scheme was again extended by notification dated 25.02.1991 (Annexure-E) from 01.04.1990 to 31.03.1995.

While the scheme was in force as aforesaid, a notification dated 17.03.1987 (Annexure-I) was issued by the Central Government whereby it was decided to grant transport subsidy as a special case, to movement of coal to the industrial units set up in North Eastern Region. The said subsidy was made available only in those cases where ash content or any other derivative of coal is used as an ingredient for the manufacture of the end product in the concerned industries. The further stipulation made was that the transport subsidy is not to be available to coal which is used exclusively as a fuel in the manufacturing process.

6. It appears that after the writ petitioner's industry for manufac

turing cement under the 'Vertical Shaft Kiln Technology' was set up, the writ petitioner submitted its claim for transport subsidy for 'Coke Breeze' for the period from 01.07.1988 to 31.12.1989 and the said transport subsidy claim of the writ petitioner was allowed by the authorities. Thereafter, the writ petitioner put forward 5 claims for transport subsidies covering the period from 01.01.1990 to 31.03.1992 for a total amount of Rs.47,27,426/- and the said claims were also recommended for reimbursement by the respondent No.4, District Industrial Centre, Haflong. But money has not been disbursed against these claims.

7. While the claim for transport subsidy was under process as aforesaid, the impugned communication dated 04.02.1992 was issued by the Central Government clarifying that, no transport subsidy is payable on movement of 'Coke Breeze' used for manufacture of cement. The said decision was taken on the perception of the authority that 'Coke Breeze' is a fuel and is not a raw material for manufacture of cement. However, it was indicated in the latter dated 04.02.1992 issued by the Central Government that the said clarification is to operate only prospectively from the date of the letter and in so far as the cases which have already been decided and disbursement of subsidy have already been made, such cases shall not be reopened. But for dealing with the pending cases it was directed that such pending cases should be dealt with, in accordance with the decision conveyed in the latter dated 04.02.1992.

8. The aforesaid communication dated 04.02.1992 came to be challenged in the writ petition. It was contended by the writ petitioner that 'Coke Breeze' is a derivative of coal and is being used as one of the raw material in the petitioner's factory for manufacturing cement and accordingly the writ petitioner is entitled to grant of transfer subsidy in terms of notification dated 17.03.1987. It was further contended that expert views were not sought by the Central Government to determine whether 'Coke Breeze' is used as a fuel or raw material in the manufacturing process of cement under 'Vertical Shaft Kiln Technology' and accordingly the decision of the authorities conveyed in the letter dated 04.02.1992 is not proper. The further contention that was raised in the writ petition was that the writ petitioner has already been granted transport subsidy for 'Coke Breeze', which is used by the petitioner in manufacturing cement and accordingly the denial of transport subsidy on 'Coke Breeze' is liable in interfered with by the writ Court.

Another contention which was pleaded and was rejected by the learned Single Judge was with reference to the applicability of the doctrine of 'Promissory Estoppel' in the instant case.

9. The learned Single Judge after elaborate discussion on the points raised in the pleadings, by his judgment dated 03.04.2001 held that inclusion or exclusion of any particular item for grant of transport subsidy is a matter of policy and such policy decision are to be taken by the Government after consideration of a wide variety of factors. It was further noted by the learned Single Judge that entitlement to transport subsidy in respect of coal and its derivatives arise only when the same are used for the manufacture of an end product and when coal and its derivatives are used as a fuel, it would not be eligible for reimbursement of transport subsidy.

The learned Single Judge also took note of the communication dated 14.07.1992 issued by the Director of Geology & Mining, Assam (Annexure-B) wherein opinion was recorded that 'Coke Breeze' is used as a fuel and also as an item which became part of the end product. No materials were available before the Court to effectively decide whether 'Coke Breeze', is used as a fuel or as a raw material or for both purpose, in the cement manufacturing process of the writ petitioner. The learned Single Judge observed that these are highly disputed question of fact and in the absence of requisite materials and pleadings, he took the view that there is no need for entering into the said controversy for the purpose of deciding the writ petition.

The learned Single Judge also considered whether any distinct pr

omise have been made out regarding availability of subsidy for 'Coke Breeze' and whether the writ petitioner had set up their manufacturing unit on the basis of such promise and found that the doctrine of Promissory Estoppel cann't be invoked in the instant case.

The learned Single Judge also rejected the contention raised that as the authorities have allowed the transport subsidy for an earlier period, the writ petitioner is entitled to continuance of such transport subsidy.

10. Challenging the dismissal of the writ petition by the impugned order dated 03.04.2001, Shri N. Dutta, the learned Sr. counsel for the appellant/writ petitioner has argued that the cement factory was set up by the writ petitioner in the North Eastern Region only because the petitioner was encouraged to set up the said factory under the belief that 'Coke Breeze' used for manufacturing of cement would be entitled to transport subsidy under the Transport Subsidy Scheme, 1971 and there is a promise to make the subsidy available during the subsistence of the scheme which came to be extended till 31.03.1995.

The next contention made by the learned Sr. counsel is to the effect that in respect of the claim which were pending at the time of issuance of the impugned notification dated 04.02.1992, the recommendation for payment have already been made by the appropriate authority and only the ministerial action remain to be carried out and since the impugned letter dated 04.02.1992 is ordered to operate prospectively, there should be an order for payment of transport subsidy in respect of the pending claim for the period from 01.01.1990 to 31.03.1992.

It was also argued that 'Coke Breeze' is used as a raw material for manufacturing cement in the 'Vertical Shaft Kiln Technology' used by the appellant/writ petitioner in their factory and accordingly the denial of the benefit of transport subsidy on 'Coke Breeze', by holding the same to be used only as a fuel and not as a raw material is not justified and the said decision is liable to be interfered with by the Court.

The final contention made is with reference to the opinions given by experts including the Director of Geology & Mining, Assam conveyed in the communication dated 14.07.1992 to advance the submission that, since Coke Breeze is capable of being used as a raw material for manufacturing cement, the impugned notification dated 04.02.1992 is unsustainable in the facts of the instant case.

The learned counsel appearing for the Assam Government Ms. B. Goyal has advanced submissions in support of the writ petitioner/appellant.

Mr. H.K. Sharma, the learned counsel appearing for the respondent No.7 has submitted that the respondent No.7 is simply a disbursing authority and accordingly he has no comment to make on the merit of the claim made in the present proceeding.

11. In order to appreciate the submissions made by the learned counsels for the parties it would be appropriate to first examine the Transport Subsidy Scheme, 1971 where there is provision for reimbursement transportation cost on raw materials used by eligible industrial units in its manufacturing process. In terms of Clause 4 (h), raw materials have been defined as follows: -

(h) 'Raw materials' means any raw materials actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India/Union or by the Government of the State.

There was no specific mention of coal or its derivatives or Coke Breeze , in the scheme when the same was notified in 1971. It can further be seen that only by the communication dated 17.03.1987, the Central Government indicated that as a special case, coal and its derivatives when used as an ingredient for manufacturing an end product, such raw materials would be eligible for grant of transport subsidy. In the said communication, it is categorically qualified that if coal and its derivatives were used as a fuel in the manufacturing process, such coal or its derivatives would not be entitled to transport subsidy.

12. In the instant case, the writ petitioner uses ’Coke Breeze’ in its cement factory. It further appears from the opinion dated 14.07.1992, given by the Director of Geology & Mining, Assam on which heavy reliance is placed by the writ petitioner, that ’Coke Breeze’ is used as a fuel and also as raw material in the cement manufacturing process. Therefore, it would not be possible for this Court to accept the contention that ’Coke Breeze’ is used only as a raw material by the writ petitioner, having regard to the opinion dated 14.07.1992 on which reliance is placed by the appellant/writ petitioner.

It is further seen from the counter affidavit filed by the Central Government that the decision to withdraw the benefit of transport subsidy on ’Coke Breeze’ has been taken after wide ranging consultation with experts in the field. Accordingly there may not be any justification for inferring that Coke Breeze is entitled to transport subsidy since the said product is capable of being used also as fuel in addition to being used as a raw material.

13. As regards the invocation of the doctrine of Promissory Estoppel , it has to be borne in mind that one of the necessary condition for invoking the said equitable doctrine is altering of position by the promisee acting on the promise made by the Government knowing that the Government would abide by its promise. It has been held by this Court in the reported decision of Union of India Vs. Shree Ganapati Rolling Mills (P.) Ltd. & Ors. reported in 2006 3 GLR 586 that to invoke the doctrine, clear foundation must be laid in the petition itself by the person invoking the doctrine. Clear and positive foundation must be laid in the petition by the party invoking the doctrine to demonstrate that the doctrine is attracted because the party invoking the doctrine has altered its position by relying on the assurance of the Government.

Having regard to the ratio laid down in the said decision, if one examines the applicability of the doctrine of Promissory Estoppel to the present case, it is seen that no material foundation whatsoever has been laid in the writ petition to show that only because of the promise made for grant of transport subsidy on ’Coke Breeze’, the writ petitioner had altered its position and set up its factory at Umrangshu. In the Transport Subsidy Scheme, 1971 no specific promise to grant transport subsidy to ’Coke Breeze’ is seen.
In fact only because of the notification dated 17.03.1987, the decision could be said to be taken for grant of transport subsidy for coal and its derivatives which are used as an ingredient for manufacturing of the end product. The learned counsel for the appellant/writ petitioner has made available for Courts perusal the Techno Chemical Feasibility Report for setting up their cement plant at Umrangshu. It appears that the said report, on the basis of which the petitioner’s factory was set up, was prepared in August 1984, prior to the notification dated 17.0.3.1987. Thus it is not only a case where the writ petitioner has failed to lay dawn the necessary foundation for invoking the doctrine of Promissory Estoppel but on the contrary this appears to be a case where the decision to set up the factory had nothing to do with the assurance contained in the notification dated 17.03.1987. The petitioner had decided to set up the said factory, a few years prior to the so called promise for transport subsidy offered through notification dated 17.03.1987 and accordingly it is clear that there is no alteration of position on the basis of the encouragement offered through notification dated 17.03.1987, by the writ petitioner. Therefore, we are in agreement with the view taken by the learned Single Judge that the doctrine of Promissory Estoppel in the facts of the present case cannot be applied for deciding on the entitlement for transport subsidy.

14. It is further seen that no materials are available before the Court to indicate that the ’Coke Breeze’ used by the petitioner is used only as a raw material and not also as a fuel for manufacturing cement. The materials made available and particularly the letter dated 14.07.1992 of the Director of Geology and Mining, Assam, which is relied on by the appellant suggest that, ’Coke Breeze’ can be used both as a fuel as well as a raw material. Under such circumstances, it is difficult for this Court to conclusively determine that the petition

er’s factory had used ’Coke Breeze’ only as a raw material in its process of pro duction of cement and that ’Coke Breeze’ was not used as a fuel.

15. As regards the claim of the petitioner for transport subsidy ent itlement on ’Coke Breeze’ only because such transport subsidy was granted prior to 01.01.1990, this Court is not prepared to accept the arguments advanced that the Government is not competent to take a decision to withdraw transport subsidy on a particular product. In the Transport Subsidy Scheme, 1971 itself, in terms of Clause 6 (XVII) it is seen that Government has the full discretion to refuse to entertain or reject any claim for transport subsidy. Accordingly the learned Single Judge is correct in his view that simply because the benefit of the tran sport subsidy was given earlier to the writ petitioner, the respondent authoriti es are not estopped from withdrawing such transport subsidy, by issuing the impu gned notification dated 04.02.1992.

16. Coming now to the submission made regarding the entitlement of t he petitioner for the transport subsidy claim which are pending before the autho rities on the day of the impugned notification dated 04.02.1992, it appears from the (Annexure-T) document that the said claim mostly relate to period prior to 04.02.1992. So far as the entitlement of the writ petitioner to transport subsid y up to 04.02.1992, i.e. when the impugned notification was issued, it is seen t hat only the ministerial formalities remained to be done and the appropriate aut hority had already recommended payment of transport
subsidy to the writ petitioner. But only because of the delay in completing the ministerial formalities the actual payments were not made towards disbursal of t he Transport Subsidy.

As the withdrawal notification dated 04.02.1992 is to operate pr ospectively and is not to effect claims which have already been decided, this Co urt is of the view that just because the transport subsidy has not been actually disbursed, the petitioner should not be refused the reimbursement of transport subsidy on ’Coke Breeze’ for the aforesaid pending claims. In the scheme under C lause 6(XV) the authorities are required to arrange for prompt payment of the cl aims and if the authorities would have made prompt payments, there would not be any situation where an eligible and recommended claim would remain unpaid, as ha s happened in the instant case. However, it is made clear that the entitlement o f the petitioner shall only be in respect of such pending claims up to the perio d till 04.02.1992 when the notification to discontinue the benefit was issued.

Accordingly it is ordered that the respondent authorities shall determine the entitlement of the petitioner to transport subsidy on ’Coke Breeze ’ with reference to the pending claims up to 04.02.1992 and not beyond and make necessary arrangement to make payment by way of reimbursement of such transport subsidy, within a period of six months from the date of receipt of the present o rder.

17. With the aforesaid direction the writ appeal is allowed to the e xtent indicated above. No cost.